

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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**FLORENTINO ALLENDE, ANTONIO JUAREZ,
SILVANO CABELLERO, ELEUTERIO CALIXTO,
JAVIER DE JESUS, SALVADOR DE JESUS,
ALEJANDRINO DIAZ, WENCESLAO DIAZ,
ADELAIDO GALEANA, RUFINO DE JESUS,
NICOLAS GALEANA, and OCTAVIO JUAREZ,**

Plaintiffs,

ECF CASE

- versus -

**Case No. 11 CIV. 5427
(AJN) (KNF)**

**PS BROTHERS GOURMET, INC. D/B/A
INDUS VALLEY, PHUMAN SINGH,
LAKHDIR SINGH a.k.a. "BILLA,"
NARESH MALHOTRA a.k.a. "NEERAJ," and
HARJEET SINGH a.k.a. "BOBBY,"**

Defendants.

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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY PROCEEDINGS**

On October 18, 2012, defendants moved for an order granting the withdrawal of Glenn Grindlinger, Fox Rothschild LLP, Richard Felix, and Law Offices of Richard Felix as counsel for defendants, and for a 30 day stay in order to engage new counsel. Plaintiffs do not oppose the withdrawal of the above-named attorneys. However, Plaintiffs oppose defendants' motion insofar as it seeks to stay proceedings for 30 days. Plaintiffs instead request that the Court, without staying this litigation, simply grant defendants 30 days to obtain substitute counsel.

Currently pending before this Court is Defendants' Motion for Partial Summary Judgment, which was fully briefed on September 28, 2012. Plaintiffs' counsel had commenced work on the proposed joint pretrial order, and had contacted defendants' counsel regarding that

order on October 15, 2012 and October 17, 2012, before defendants filed the instant motion. Declaration of Jane Chung in Opposition to Defendants' Motion to Stay Proceedings ("Chung Decl.") ¶ 3. Given that this case is on the verge of trial readiness and the already significant delays in this case¹, a stay of this case—and in particular of the pending motion for partial summary judgment—is unnecessary and would unduly prejudice plaintiffs. *See Malarkey v. Texaco, Inc.*, No. 81 Civ. 5224, 1989 WL 88709, at *2, *3 (S.D.N.Y. Jul. 31, 1989) (case was "on the verge of trial readiness" where Court also ordered that parties had 60 days for joint pretrial memorandum). Notably, in none of the cases cited by defendants in support of their request for a stay did the Court in fact grant a stay; rather, the Court simply ordered 30 days to obtain substitute counsel. *See Century Jets Aviation, LLC v. Alchemist Jet Air, LLC*, Nos. 08 civ. 9892, 09 Civ. 7659, 2009 WL 4035642, at *3 (S.D.N.Y. Nov. 23, 2009); *Centrifugal Force, Inc. v. SoftNet Commc'n, Inc.*, No. 08 Civ. 5463, 2009 WL 969925, at *2 (S.D.N.Y. Apr. 7, 2009); *HCC, Inc. v. R H & M Machine Co.*, No. 96 Civ. 4920, 1998 WL 411313, at *1 (S.D.N.Y. Jul. 20, 1998).

Further, as in *Centrifugal Force, Inc.*, this Court should order that each individual defendant advise the Court within 30 days whether he will represent himself or has obtained counsel. *See* 2009 WL 969925 at *2. Plaintiffs also request an order that failure by defendant PS Brothers Gourmet, Inc. to appear represented by counsel within 30 days shall result in entry of a judgment of default against it. *See, e.g., HSW Enterprises, Inc. v. Woo Lae Oak, Inc.*, No. 08 Civ. 8476, 2010 WL 1630686, at *5 (S.D.N.Y. Apr. 21, 2010).

¹ As just one example, defendants initially failed to appear in this action until this Court had entered default against each of them. Chung Decl. ¶ 2; Case Docket Nos. 9 & 12 (Clerk's Certificates entering default against all defendants).

Dated: New York, New York
October 24, 2012

Respectfully submitted,

/s/ Jane Chung
Jane Chung (JC 0721)
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